

IN THE U.S. PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of	Appeal No.
Serge CALAMEL	Conf. 3014
Application No. 10/559,680	Group 3774
Filed December 6, 2005	Examiner A. Schillinger

INSERT FOR A COTYLOID IMPLANT CUP FOR A JOINT PROSTHESIS,
COTYLOID IMPLANT AND JOINT PROSTHESIS

APPEAL BRIEF

MAY IT PLEASE YOUR HONORS:

(i) **Real Party in Interest**

The real party in interest in this appeal is the current assignee, BIOTECHNI of La Ciotat, France.

(ii) **Related Appeals and Interferences**

None.

(iii) **Status of Claims**

Original claims 1-14 were canceled.

Claims 15-30 are now in the case and it from the final rejection of these claims, that the present appeal is taken. Thus, the claims on appeal are 15-30 as amended or presented in the amendment of October 30, 2007.

More particularly, claims 15, 27 and 28 were amended in that amendment and new claims 29 and 30 were presented by that

amendment. The remaining claims had been previously presented prior to the amendment of October 30, 2007.

(iv) **Status of Amendments**

No amendment was filed subsequent to the final rejection of January 16, 2008, from which final rejection the present appeal is taken.

(v) **Summary of Claimed Subject Matter**

There is only one independent claim, claim 15. It defines an acetabular implant cup insert for a joint prosthesis having a metal shell (1) (page 4, line 5 et seq.) (Figs. 1a, 1b and 2) and a polymer lining lining the inside space of the shell (14) (page 5, line 1 et seq.) (Fig. 2). A receptacle (18) for a prosthetic head is formed in the lining.

On its inside space, the shell has means (11, 12) (page 3, lines 28-30; page 4, lines 24-29; page 5, lines 19-29) (Figs. 1a, 1b and 2) disposed on an end wall 10 (Figs. 1a and 1b) (page 4, line 25) of the posterior portion (5) of the inside space (4) of the shell (1) (page 4, lines 25 and 26). A stud (11) has at least one groove or lip with which the lining interfits to lock the lining on a shell (page 4, lines 28 and 29; page 5, lines 19-29). There are means for preventing the lining turning in the shell (8 and 9) (Figs. 1a and 1b) (page 5, lines 30-32), but it is the stud, and not these anti-turning means, on which the unobviousness of claim 15 depends.

We call attention also to claim 29, which will be separately argued below, which requires the stud to be disposed centrally of the shell (Figs. 1a, 1b and 2).

(vi) Grounds of Rejection to be Reviewed on Appeal

There are four grounds of rejection presented for review. The first is the rejection of claims 15-23 and 27-30 under 35 USC 102(b) as being anticipated by WILLI U.S. Patent No. 5,549,696.

The other grounds applied against claims 24, 25 and 26, respectively, are under 35 USC 103(a) asserting unpatentability over WILLI in view of NOBLE et al. U.S. Patent 5,002,580 or NOILES U.S. Patent 4,678,472 or FIXEL U.S. Patent 4,180,873, respectively.

(vii) Argument

We will argue specifically the rejection under 35 USC 102(b) of certain claims as anticipated by WILLI. We will not separately argue the three rejections under 35 USC 103(a), because the reasons for which NOBLE et al., NOILES and FIXEL were respectively applied to claims 24, 25 and 26 have nothing to do with the rejection on the ground of anticipation by WILLI. It is not to be considered that we acknowledge the validity of the rejections under 35 USC 103(a): we simply state that they are no stronger against the claims including claims 24, 25 and 26, than is WILLI alone. In other words, the secondary references may teach the individual features for which they were applied; but as

these features have nothing to do with anticipation by WILLI, they need not be separately discussed.

Getting on with the argument against anticipation by WILLI, we will argue this rejection separately for claims 15-23, 27, 28 and 30, on the one hand, and for claim 29, as follows:

Claims 15-23, 27, 28 and 30

Basic claim 15 requires a stud disposed on an end wall of the posterior portion of the inside space of the shell, the stud having at least one groove or lip with which the lining interfits to lock the lining on the shell.

WILLI has nothing of the sort. WILLI has a stud 4 (on the lining, not the shell) but this stud does nothing to lock the lining on the shell and has no groove or lip for that purpose. Apparently the stud 4 (called by WILLI a "pole") is merely a centering device. See column 3, lines 8 and 9 and column 4, lines 54-59 of WILLI.

What holds the liner and the shell together in WILLI, is a snap action described in column 2, lines 53-56 of WILLI, as well as the fastening elements 8 described in column 3, line 29 et seq. of WILLI. This is structure disposed peripherally about the outer edge of the anterior portion of WILLI and cannot in any way be likened to the structure of the present invention under 35 USC 102 (nor even under 35 USC 103).

Claim 29

Claim 29 requires that the stud 11 be disposed centrally of the shell. As pointed out above, there is a stud or pole 4 in WILLI, but it performs no function other than centering and so has no lip or groove nor any other way of holding the shell and the lining together.

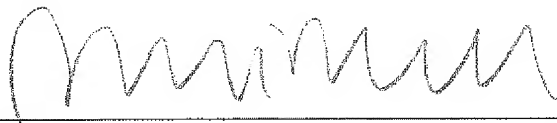
In view of the foregoing, therefore, it is believed to be evident that the rejections of record cannot be sustained, but must be reversed, and such reversal is respectfully requested.

Please charge the Appeal Brief fee of \$255 to our credit card set forth in the attached Credit Card Payment Form.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any underpayment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. \$ 1.16 or under 37 C.F.R. \$ 1.17.

Respectfully submitted,

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RJP/fb
September 12, 2008

(viii) **Claims Appendix**

15. An acetabular implant cup insert for a joint prosthesis, the insert comprising a metal shell and a polymer lining lining the inside space of said shell, a receptacle for a prosthetic head being formed in the lining, said shell presenting on its inside space means for preventing said lining being extracted from the shell and means for preventing the lining turning in the shell, wherein said means for preventing the lining being extracted comprise a stud disposed on an end wall of the posterior portion of the inside space of the shell, said stud having at least one groove or lip with which the lining interfits to lock the lining on the shell.

16. The insert according to claim 15, wherein said means for preventing extraction of said lining include at least one lip.

17. The insert according to claim 15, wherein said means for preventing said lining being extracted include at least one groove.

18. The insert according to claim 15, wherein said means for preventing the lining from turning comprise projections formed on the surface of the wall defining the inside space of the shell.

19. The insert according to claim 18, wherein said projections are ribs extending over all or a fraction of the height of the inside space of the shell.

20. The insert according to claim 15, wherein said means for preventing the lining from turning comprise depressions formed in the surface of the wall defining the inside space of the shell.

21. The insert according to claim 16, wherein said means for preventing the lining from turning comprise projections formed on the surface of the wall defining the inside space of the shell, and wherein projections are formed on the lip.

22. The insert according to claim 16, wherein said means for preventing the lining from turning comprise depressions formed in the surface of the wall defining the inside space of the shell, and wherein depressions are formed in the lip.

23. The insert according to claim 15, wherein the anterior portion of said shell presents a conical shape.

24. The insert according to claim 15, wherein the wall of the receptacle is covered in ceramic.

25. The insert according to claim 15, wherein said lining is obtained by an operation of thermocompressing said polymer in said inside space of the shell, followed by a machining operation.

26. The insert according to claim 15, wherein said lining is obtained by prior shaping, and wherein it is put into place by being impacted into the shell.

27. An acetabular implant comprising a cup for being fastened in the pelvis or a shoulder blade of a patient, and an insert lining the inside of said cup in order to receive a prosthetic head, wherein the insert is according to claim 15.

28. A joint prosthesis comprising an acetabular implant and a prosthetic head, wherein said implant is according to claim 27.

29. The insert according to claim 15, wherein said stud is disposed centrally of the shell.

30. The insert according to claim 15, wherein said stud is formed integrally with said shell.

(ix) **Evidence Appendix**

None.

(x) **Related Proceedings Appendix**

None.